

REMARKS

This responds to the Office Action mailed on June 6, 2007.

Claims 11, 17 and 27-37 are amended, no claims are canceled or added; as a result, claims 1-40 remain pending in this application. Claims 11, 17 and 37 have been amended to correct minor typographical errors. Claims 27-36 have been amended to substitute "computer-readable" for "machine-readable" in the preamble. These amendments are not in response to an art based rejection or other reason related to patentability and are not believed to affect the scope the claims.

Claim Objections

Claim 17 was objected to under 37 CFR 1.75 because of the following informalities: For claim 17 line 2, the Office Action suggested deletion of the word --a--. Applicant has amended claim 17 as suggested in the Office Action.

§101 Rejection of the Claims

Claims 27-36 were rejected under 35 USC § 101 because the claimed invention is directed to non-statutory subject matter. Applicant has amended claims 27-36 such that a computer-readable medium having processor executable instructions is now recited. Applicant respectfully submits that the amendment overcomes the rejection, and requests reconsideration and the withdrawal of the rejection.

§102 Rejection of the Claims

Claims 1-40 were rejected under 35 USC § 102(e) as being anticipated by Guo et al. (U.S. 6,937,591 B2). Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration. *In re Dillon* 919 F.2d 688, 16 USPQ 2d 1897, 1908 (Fed. Cir. 1990) (en banc), cert. denied, 500 U.S. 904 (1991). It is not enough, however, that the prior art reference discloses all the claimed elements in isolation. Rather, "[a]nticipation requires the presence in a single prior reference disclosure of each and every element of the claimed invention, *arranged as in the claim.*" *Lindemann Maschinenfabrik GmbH v. American Hoist &*

Derrick Co., 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)) (emphasis added).

Further, “The identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989); MPEP § 2131.

Applicant respectfully submits that the Office Action did not make out a *prima facie* case of anticipation because Guo does not disclose each and every element of Applicant’s claims, and further, Guo does not teach the identical invention in as complete detail as is recited in Applicant’s claims.

In general, the claims recite determining a contention window based on the success or lack of success in transmitting a packet, and based on the value of a “threshold value.” For example, independent claim 1 recites “if transmitting the packet is successful and the current value of the contention window parameter is less than the threshold value then decreasing the contention window parameter according to a contention avoidance operation.” Claim 1 further recites “if transmitting the packet is successful and the current value of the contention window parameter is greater than the threshold value then decreasing the contention window parameter according to a slow start operation.” Independent claims 11, 27 and 37 recite similar language. In Guo, statistical analysis is used to determine a probability of success or failure of transmitting a packet, this probability may then be used as a factor in determining a contention window (see e.g., Guo at column 6, line 58 to column 7, line 5 and at column 8, line 10 to column 9, line 38. The operation of the claimed inventive subject matter is quite different from Guo. As recited in Applicant’s claims, decisions are made based on whether a packet is successfully transmitted or not, and whether a preceding packet was successfully transmitted or not. This direct determination of success or failure is different from the probabilistic methods disclosed in Guo.

Additionally, Guo does not teach comparing the contention window size to a threshold value to determine if a contention window is to be adjusted as recited in claims 1, 11, 27 and 37. The only use of a threshold value in Guo appears to be comparing a count of transmission to a threshold value to determine if a sufficient number of transmission attempts have been made such that valid probabilities can be obtained (see e.g., column 7, line 59 to column 8, line 14 and FIG. 3). The Office Action fails to particularly identify any element of Guo that corresponds to

the threshold value as recited in Applicant's claims. Applicant has reviewed Guo and can find no disclosure of such a threshold value, nor can Applicant find any teaching or disclosure of comparing a contention window size to the current value of a threshold value that may be adjusted in accordance to whether packets have been successfully transmitted or not.

In view of the above, Guo fails to disclose each and every element of Applicant's claims 1, 11, 27 and 37, and does not disclose the elements as arranged in the claims. Thus Guo does not anticipate claims 1, 11, 27 and 37. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claims 1, 11, 27 and 37.

Claims 2-10, 12-26, 28-36 and 38-40 depend either directly or indirectly from independent claims 1, 11, 27 and 37 respectively, and inherit the elements of their respective base claims. Dependent claims 2-10, 12-26, 28-36 and 38-40 are therefore not anticipated by Guo for at least the same reasons as discussed above regarding their respective base claims. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claims 2-10, 12-26, 28-36 and 38-40.

RESERVATION OF RIGHTS

In the interest of clarity and brevity, Applicant may not have addressed every assertion made in the Office Action. Applicant's silence regarding any such assertion does not constitute any admission or acquiescence. Applicant reserves all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicant does not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney ((612) 373-6954) to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

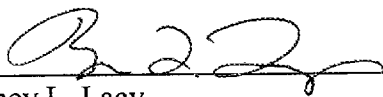
Respectfully submitted,

CHANGWEN LIU

By their Representatives,
SCHWEGMAN, LUNDBERG, & WOESSNER, P.A.
P.O. Box 2938
Minneapolis, Minnesota 55402
(612) 373-6954

Date October 9, 2007

By /


Rodney L. Lacy
Reg. No. 41,136

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: MS Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 9th day of October 2007.

Name

Amy Moriarty

Signature

